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UNITED STATES DISTRICT COURT
FOR DISTRICT OF NORTHERN CALIFORNIA

VLADIMIR BALAREZO and OSMIN AVILA,
and on behalf of other similarly situated

Case No.:C07-05243 JF

Plaintiffs,
vs.

NTH CONNECT TELECOM INC., AND
STEVEN CHEN,
Defendants

**DECLARATION OF TOMAS E. MARGAIN
IN SUPPORT OF PLAINTIFFS' MOTION
FOR APPROVAL OF HOFFMANN-LA
ROCHE NOTICE**

Date: April 11, 2008
Time: 9:00 am
Judge: Honorable Jeremy Fogel

I, the undersigned, declare as follows:

1. I am an attorney duly authorized to practice before this Court and Plaintiffs' attorney of record in this action. I base this declaration on my personal knowledge unless otherwise indicated.

2. I have audited the earned but unpaid regular and overtime wages of Plaintiff Vladimir Balarezo using Defendant Nth Connect's time and pay records. In using these records, I used the actual time records that Nth Connect used to process the payment of wages, as contained in its Motion to Dismiss, even though we believe that discovery will show that the

1 time records undercount hours worked because Techs do not take full 30 minute meal periods
2 and work more hours than reflected in the time records. However, because the purposes of the
3 audit is to show that overtime premium pay is due and owing under the FLSA, based of
4 Defendants payment system, the actual records Defendant Nth Connect relied on to run payroll
5 are being used. This is done to show the entitlement to overtime wages based on a uniform
6 system in order to seek approval of a Notice to all affected former and current employees so they
7 may opt-in to this litigation.

8 3. Installation Technicians at Nth Connect are paid by the number of installations
9 and disconnects they perform in any given week. Each of these jobs is assigned a name and a
10 payment by Defendants. Attached as Exhibit 1 is a true and correct copy of a “bi-weekly” tech
11 payout sheet for Plaintiff Balarezo showing he performed \$1,522.75 in installations or
12 disconnects for the week ending 4/7/2007 and \$1,265.50 for the week ending 4/14/07 for a total
13 of \$2,788.25. As an example of the first “piece rate” job listed, when Plaintiff performed an
14 “Underground New Connect” he would be paid \$18.00. Exhibit 1 tracks all the jobs and lists the
15 weekly total. I reviewed all of the “bi-weekly” tech payout sheets and they show that installers
16 in the Delta Valley, San Jose, Richmond East Bay and Fremont East Bay all had a similar piece
17 rate payment scheme as Plaintiff Balarezo worked in all of these areas and was paid in a uniform
18 manner.

19 4. For the weeks of 4/1/2007 through 4/14/2007, the time records as maintained by
20 Defendant show that Plaintiff worked 40 regular hours and 21.25 overtime hours for the week
21 ending 4/7/2007 and 40 regular hours and 21.25 overtime hours for the week ending 4/14/07.
22 Attached as Exhibit 2 is a true and correct copy of such time sheet for that week submitted by
23 Defendants in connection with their Motion to Dismiss. I reviewed all of Plaintiff Balarezo’s
24 time sheets and they are similar in format. Moreover, they consistently show him working a
25 typical 6-day work week with overtime hours.

5. The problem occurs when Defendants proceeded to pay Plaintiff and other Techs. Attached as Exhibit 3 is a true and correct copy of the wage stub for the period of 4/1/2007 though 4/14/2007 which Plaintiff received. It shows that Plaintiff Balarezo was paid 80 regular hours at \$7.50, 42.50 overtime hours at \$11.25 and a payment of \$1,069.93 for "Piece Work" for a total payment of \$2,148.06 gross and from which statutory deductions are taken. It also adds a payment of \$640.20 for what is called "Gas Reimbursement" from which no statutory deductions are taken. Adding these two amounts, the total pay is \$2,788.26 which is one penny off from the piece rate total found at Exhibit 1 of \$2,788.25.

6. I went through all of Plaintiff Balarezo's wage stubs and saw that he was consistently paid the piece rate total by paying his a minimum wage and then having extra payments added for "Piece Work," "Bonuses," Gas Reimbursement," "Expenses" and "Tools." These payments are directly attributable to the piece rate contained in the "bi weekly" tech payout sheets and show that overtime wages based on the true "regular rate" were never paid.

7. This payment method violates the FLSA and 29 C.F.R. § 778.11 as Plaintiff is not getting any overtime premium pay for hours worked over 40 in one week. The correct calculation for the week ending 4/7/2007 is as follows. Based on the company time records, Plaintiff worked 61.25 hours being 40 regular and 21.25 overtime. See Exh. 2. The "regular rate" is determined by taking the weekly piece rate earnings or \$1,522.75 (Exh. 1) and dividing by 61.25. See 29 C.F.R. § 778.11. This results in a "regular rate" of \$24.86. At this point, Plaintiff is owed the overtime premium based on a \$24.86 hourly wage for the 21.25 overtime hours worked. This results in overtime wages due and owing of \$264.15 for one week alone (\$24.86 x 21.25 x 0.5).

I declare under penalties of perjury under the laws of the United States that the foregoing is true and accurate.

Dated: March 5, 2008

By: /s/ Tomas E. Margain
Tomas E. Margain
Attorney for Plaintiffs